

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">v.</div> JOSE GONZALEZ (1), <div style="text-align: center;">Defendant. </div>	} } } } } } } } } } }	Case No. 11CR3042-H ORDER DENYING DEFENDANT’S MOTION TO REDUCE SENTENCE UNDER 18 U.S.C. § 3582(c)(2) AND REFERRING CASE TO FEDERAL DEFENDERS FOR FURTHER SCREENING
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On January 7, 2015, Defendant Jose Gonzalez (“Defendant”) filed a motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) (“§ 3582(c)(2)”) based on Amendment 782 to the United States Sentencing Guidelines (“U.S.S.G.”) as promulgated by the United States Sentencing Commission. (Doc. No. 70.)¹ Pursuant to the Court’s order, the motion was filed nunc pro tunc to January 2, 2015, the date the Court received the motion. (Doc. No. 69.)

On March 10, 2015, the Court appointed Federal Defenders of San Diego, Inc. (“Federal Defenders”) to review the Defendant’s motion pursuant to General Order 642 (S.D. Cal., 2014.) (Doc. No. 71.)

On May 16, 2016, the Court set a hearing on the Defendant’s motion to reduce his sentence for May 31, 2016. (Doc. No. 72.) On May 25, 2016, the Government filed

¹ The Honorable Irma E. Gonzalez., who was originally assigned to this case, is no longer with the Court. Accordingly, the matter was randomly reassigned to this Court. (Doc. No. 68.)

1 a response in opposition to the Defendant's motion. (Doc. No. 74.)


2 On May 31, 2016, the Court held a hearing on the Defendant's motion under §
3 3582(c)(2). (Doc. No. 75.) James Fife of Federal Defenders appeared on behalf of the
4 Defendant. Assistant United States Attorney Cynthia Lynne Millsaps appeared on
5 behalf of the Government.

6 The Defendant was sentenced by the Honorable Irma E. Gonzalez to a custodial
7 term of 108 months. (Doc. Nos. 62 and 64.) Based on Judge Gonzalez's Statement of
8 Reasons, the Court adopted the Presentence Report's guideline calculations and applied
9 the career offender guidelines under Chapter Four of the U.S.S.G. (See PSR, Doc. No.
10 52 at pg. 13.) The parties also agreed that the Defendant is a career offender pursuant
11 to U.S.S.G. § 4B1.1(a). (Doc. No. 42 at pg. 7.) Since the Defendant was sentenced under
12 the career offender guidelines under U.S.S.G § 4B1.1, the Defendant is not eligible for
13 a reduction of his sentence. United States v. Charles, 749 F.3d 767, 771 (9th Cir. 2014)
14 ("Because [the Defendant] was sentenced as a career offender (USSG § 4B1.1), the
15 retroactive amendments to the drug guideline (USSG § 2D1.1) do not qualify him for
16 sentence reduction consideration.") Accordingly, the Court DENIES the Defendant's
17 motion for a sentence reduction under § 3582(c)(2).

18 However, given the Supreme Court's ruling in Johnson v. United States, 135 S.
19 Ct. 2551 (2015) and Welch v. United States, 136 S. Ct. 1257 (2016), the Court appoints
20 Federal Defenders to screen the Defendant's case for any potential relief under Johnson
21 and Welch pursuant to General Order 649 (S.D. Cal. 2015.) The Court requests a status
22 report within a reasonable period of time after the Defendant's case is screened for any
23 potential relief.

24 IT IS SO ORDERED.

25 DATED: May 31, 2016

26 
27 HONORABLE MARILYN L. HUFF
28 UNITED STATES DISTRICT JUDGE